



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: R. Campbell et al.

Conf. No.: 8014

Serial No.: 10/087,942

Art Unit: 1639

Filing Date: March 5, 2002

Examiner: T. Wessendorf

For: **Methods, Apparatus and Computer Program Products for Formulating Culture Media** **RECEIVED**

JAN 30 2004

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

TECH CENTER 1600/2900

RESPONSE TO RESTRICTION and SPECIES ELECTION REQUIREMENT

Sir:

In response to the Office Action mailed on October 20, 2003, the response having been extended by two (2) months to January 20, 2004, wherein the Examiner requested an election to subject matter specified in claims 1-127, Applicants elect Group I containing claims 1-15 and 18-30 with traverse.

The Examiner asserts that the inventions of Groups I, IV and VIII are unrelated because they contain different process steps, modes of operations and effects. Applicants respectfully submit that the independent claim of each group recites the same basic steps that define the core of the invention: measuring first indicia of a property, determining a relationship between at least one parameter and the measured first indicia, determining a test requirement relating to the measured first indicia, and (based on the relationship) identifying additional compounds expected to provide indicia which meet the test requirement. These steps define the same essential characteristics of a single disclosed embodiment of the invention. Additional steps such as culturing do not result in distinct inventions, but only vary the scope of the same invention as claimed. Therefore Groups I, IV and VIII are merely different definitions of the same disclosed subject matter. Under such circumstances restriction should never be required (MPEP §806.03).

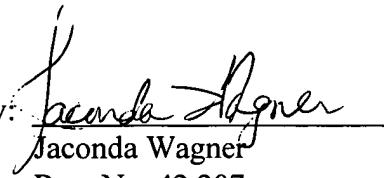
Accordingly, the requirement for restriction between the invention of Group I, the invention of Group IV and the invention of Group VIII should be withdrawn.

Applicants note that in Paper No. 5 of the parent case (09/359,260) from which this divisional was filed and claims priority, the restriction between Groups I, IV and VIII was withdrawn. Applicants also note that the claims in Groups II, III, V, VI, and IX were cancelled in the transmittal at the time the divisional was filed.

In response to the requirement for election of a species: (A) for performing the function, Applicants elect the function  $y_i = f(x_{ij})$  setting forth all the variables; (B) for parameters, Applicants elect molecular weight, hydrophobicity and total charge; (C) for test libraries, Applicants elect peptides; and (D) plurality of cell cultures, including the forming step and enhancement of  $\beta$ -toxin production. Applicants respectfully submit that the election has been made in good faith.

Applicants expressly reserve the right to the non-elected subject matter including the right to file one or more continuation and/or divisional applications to that subject matter as now embraced in the non-elected claims contained in Groups IV, VII and VIII.

Respectfully submitted,

By:   
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Attorney for Applicants

Dated: January 20, 2004

**PATENT**  
**P-3250D2**

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